IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9748 of 1999
with
CIVIL APPLICATION NO 4567 OF 2003 IN
SPECIAL CIVIL APPLICATION NO. 9748 OF 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXPLOROIL OTECH INDIA PVT LTD

Versus

RAKESH KANSHAL

Appearance:

1. Special Civil Application No. 9748 of 1999

MR NILESH M SHAH for Petitioner No. 1

MR MAYANK DESAI for Petitioner No. 1

MR AR MAJMUDAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 10/10/2003

ORAL JUDGEMENT

Heard learned advocate Mr. A.R. Majmudar for the respondent workman and Mr. N.M. Shah, learned advocate for the petitioner. Present petition being special civil application no. 9748 of 1999 has been filed by the petitioner EXPLOROIL OTECH INDIA PVT LTD challenging the order passed by the labour court concerned in recovery application no. 360 of 1996 dated 4th September, 1999 wherein the labour court has directed the petitioner to pay Rs.80923.00 with interest thereon at the rate of 6 per cent p.a. with effect from 25th July, 1996. Initially, this court passed the order to issue notice on 13.3.2000 and thereafter, this court has passed the following order on 13.7.2001:

"Heard the learned advocate for the petitioner. None present for the respondent. Rule. The operation and implementation of the impugned order is stayed on the condition that the principal amount of Rs.80923.00 shall be deposited in the labour court, Vadodara within a period of six weeks as stated by the learned counsel."

Thus, while issuing rule, this court has stayed the operation of the impugned order on condition that the principal amount of Rs.80923.00 is deposited by the petitioner before the labour court concerned within six weeks as stated by the learned counsel. It is necessary to be noted that this interim order has been passed by this court (Coram : D.H. Waghela,J.) on the basis of the statement made by the learned advocate Mr. N.M. Shah before the court and in view of his statement,the operation of the impugned order has been stayed by this court while issuing rule in the matter. However, since the said amount as per the directions issued by this court based on the statement of the learned advocate Mr. N.M. Shah has not been deposited by the petitioner and, therefore, the workman respondent has filed the aforesaid civil application no. 4567 of 2003 with a prayer to vacate the interim order passed by this court on 13th July, 2001. On 22.9.2003, detailed order was passed by this court on the said civil application and while vacating the stay operating in the main matter, it was further directed by this court to Mr. Lakshman Sarup Bhatnagar, General Manager of the petitioner company residing at 43 (B) Urmi Society, Alkapuri, Baroda-5 to remain personally present before this court on 30.9.2003. It was also directed by this court to said Shri Lakshman Sarup Bhatnagar to deposit the entire amount which has

been ordered by the labour court, Baroda before this court on or before 30.9.2003 failing which this court will issue a contempt proceedings against him.

It was submitted by the learned advocate Mr.N.M. Shah that as an advocate, he informed the petitioner by letter dated 16th July, 2001 about the interim order passed by this court to deposit the amount of Rs.80923.00 before the labour court concerned. It was also submitted by him that the envelope containing the said letter dated 16th July, 2001 has returned back to him and thereafter, there was no further communication made by the learned advocate Mr. N.M. Shah to the petitioner or to the General Manager of the company and he has also not inquired as to whether the amount has been deposited by the petitioner as per the interim order passed by this court on 13th July, 2001. Learned advocate Mr. Majmudar for the respondent workman has clarified in the application on an affidavit that the amount in question has not been deposited by the petitioner before the labour court, Baroda. The respondent was permitted to serve the petitioner directly the order passed by this court on 22.9.2003 and after the Direct Service was given to the respondent, on the last occasion, it was submitted by the learned advocate Mr. Majmudar that nobody was available in the place in which the notice issued by this court was required to be served upon the petitioner and no person was found on that address including Shri Lakshman Sarup, General Manager of the company and therefore, the notice has returned unserved.

In view of these facts, according to my opinion, once when the order was obtained by the learned advocate Mr. N.M. Shah on the basis of his statement and on that basis, interim order staying operation of the impugned order has been passed, it is very serious thing that it has not been complied with by the petitioner for a period of more than two years from the date of the interim order though it enjoyed the stay against the operation of the order of the labour court and being an officer of the court, it was the duty of the learned advocate Mr. N.M. Shah to inquire as to whether the directions issued by this court have been complied with or not by the petitioner but no such care has been taken by the learned advocate Mr. N.M. Shah. Being an officer of the court, learned advocate Mr. N.M. Shah ought to have given timely communication to the petitioner and in case if the envelope has returned back, then, he ought to have immediately brought the same to this court's notice. However no such care has been taken and the direction issued by this court on 22nd Sept. 2003 have also not

been complied with by the petitioner. At this juncture, it was submitted by the learned advocate Mr. N.M. Shah that after the order was passed by this court on 22nd September, 2003, his mother expired on 23rd September, 2003. However, considering these entire facts and circumstances of the case, according to my opinion, considering the non compliance of the interim order passed by this court on 13th July, 2001 which was passed by this court only in view of the statement made by the learned advocate Mr. Shah, according to my opinion, such an approach and non cooperative attitude on the part of the petitioner and his advocate Mr. N.M. Shah is enough to dismiss the present petition on that ground alone. Therefore, on that ground alone, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated as per the order passed by this court on 22.9.2003 in Civil Application no. 4567 of 2003 in this petition. There shall be no order as to costs.

In view of this order passed by this court in the main matter, there is no need to pass any order on civil application no. 4567 of 2003. Hence said civil application is also disposed of accordingly with no order as to costs.

Dt.10.10.2003. (H.K. Rathod,J.)

Vyas